



January 30, 2006

SENATE BILL No. 229

DIGEST OF SB 229 (Updated January 26, 2006 12:36 pm - DI 110)

Citations Affected: IC 27-1.

Synopsis: Independent college self-insurance program. Allows independent colleges and universities to enter into agreements to jointly self-insure certain retained risks under certain circumstances. Requires reports to the department of insurance.

Effective: July 1, 2006.

Lubbers

January 9, 2006, read first time and referred to Committee on Insurance and Financial Institutions.
January 30, 2006, amended, reported favorably — Do Pass.

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SB 229—LS 6483/DI 97+



January 30, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 229

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-1-39 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2006]:

4 **Chapter 39. Independent Educational Institution Self-Insurance**
5 **Consortium**

6 **Sec. 1. As used in this chapter, "commissioner" means the**
7 **insurance commissioner appointed under IC 27-1-1-2.**

8 **Sec. 2. As used in this chapter, "consortium" refers to a**
9 **self-insurance consortium established under section 10 of this**
10 **chapter.**

11 **Sec. 3. As used in this chapter, "consortium program" refers to**
12 **a program described in section 10 of this chapter.**

13 **Sec. 4. As used in this chapter, "examiner" has the meaning set**
14 **forth in IC 27-1-3.1-4.**

15 **Sec. 5. As used in this chapter, "excess insurance coverage"**
16 **means coverage provided under an insurance policy that:**

17 **(1) is purchased by a consortium program; and**

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(2) provides excess coverage for claim amounts that exceed the per claim amount or aggregate amount covered by the consortium's self-insurance fund.

Sec. 6. As used in this chapter, "independent educational institution" refers to an independent, degree granting college or university that is:

- (1) accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools;
- (2) chartered in Indiana; and
- (3) operated as a nonprofit entity under Section 501(c)(3) of the Internal Revenue Code.

Sec. 7. As used in this chapter, "member" means an independent educational institution that enters into an agreement under section 10 of this chapter to form a consortium.

Sec. 8. As used in this chapter, "self-insurance fund" means a fund established by a consortium to provide money sufficient to:

- (1) cover self-insured risk retained by members for losses covered by the consortium program;
- (2) pay premiums for excess insurance coverage; and
- (3) pay the administrative and other costs of the consortium program.

Sec. 9. As used in this chapter, "service provider" means an individual or entity that enters into a contract with a consortium program to provide to the consortium program:

- (1) administrative;
- (2) insurance brokerage;
- (3) claims administration;
- (4) risk control; or
- (5) investment management;

services.

Sec. 10. Notwithstanding any other law, two (2) or more independent educational institutions may enter into an agreement to establish and maintain a self-insurance consortium through which the independent educational institutions maintain a program of joint self-insurance to cover certain retained risks and jointly purchase excess insurance coverage, including any of the following types of excess insurance coverage:

- (1) Casualty insurance, including:
 - (A) educator legal liability;
 - (B) other liability; and
 - (C) student accident;
- insurance.

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(2) Property insurance, including inland marine insurance.

(3) Motor vehicle insurance.

(4) Surety and fidelity insurance.

(5) Umbrella and excess insurance.

(6) Worker's compensation insurance.

Sec. 11. A consortium shall be governed by a governing authority comprised entirely of representatives of the consortium's members.

Sec. 12. Except as provided in this chapter, the development, administration, and operation of a consortium program does not constitute the business of insurance, and a consortium program is not subject to the insurance laws of Indiana.

Sec. 13. (a) A consortium program shall:

(1) establish a self-insurance fund with a per claim limit and an aggregate limit on the total amount of self-insured risk retained by the members in a fiscal year; and

(2) maintain excess insurance coverage that has been reviewed and approved by the commissioner.

(b) A self-insurance fund established under subsection (a) must be:

(1) actuarially sound; and

(2) funded at the beginning of each fiscal year by a contribution from each member in an amount that reflects the member's share of self-insured risk and other costs of the consortium program.

(c) Annual contributions to the self-insurance fund under subsection (b) must be:

(1) determined using generally accepted actuarial standards; and

(2) set to fund, at the beginning of each fiscal year, at least one hundred percent (100%) of the self-insured risk retained by the members in a fiscal year plus the other costs of the consortium program, including premiums for excess insurance coverage.

Sec. 14. (a) The governing authority of the consortium program shall adopt bylaws, including the following:

(1) A financial plan setting forth in general terms:

(A) the types of risks covered under the consortium program;

(B) the per claim limit and the aggregate limit on the total amount of self-insured risk retained by the consortium program in a fiscal year;

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- 1 (C) the minimum amount of excess insurance coverage that
 2 must be maintained by the consortium program; and
 3 (D) the procedure for determining each member's annual
 4 contribution to the self-insurance fund.
- 5 (2) A plan of management that provides for:
- 6 (A) the responsibility of the governing authority with
 7 regard to:
- 8 (i) maintaining the amount of reserves in the
 9 self-insurance fund;
 10 (ii) disposing of surpluses; and
 11 (iii) administering the consortium program in the event
 12 of termination;
- 13 (B) the basis on which new members may be admitted to
 14 the consortium program;
- 15 (C) the basis on which participating members may
 16 withdraw from the consortium program, including a:
- 17 (i) thirty (30) day period at the end of each fiscal year
 18 after the consortium program's first year of operation
 19 during which a member may withdraw; and
 20 (ii) requirement that a withdrawing member remains
 21 jointly and severally liable for any claim arising during
 22 the period during which the withdrawing member was a
 23 member; and
- 24 (D) other provisions necessary or desirable for the
 25 operation of the consortium program.
- 26 (3) A conflict of interest policy for:
- 27 (A) employees; and
 28 (B) service providers;
 29 of the consortium program.
- 30 (b) The following must be submitted to and approved by the
 31 commissioner before a consortium program may commence
 32 operations:
- 33 (1) A copy of the bylaws described in subsection (a).
 34 (2) The form of any insurance contracts purchased by the
 35 consortium program, including contracts for excess insurance
 36 coverage.
 37 (3) An accounting, based on generally accepted actuarial
 38 standards, of sufficient reserves committed to pay obligations
 39 of the consortium program.
 40 (4) A copy of each coverage document form to be issued by
 41 the consortium program.
 42 (5) Any other information determined necessary by the

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commissioner.

(c) If the commissioner does not disapprove the information submitted under subsection (b) earlier than thirty (30) days after the information is submitted, the information is considered approved.

Sec. 15. (a) A consortium program may enter into a contract with a service provider to obtain the services of the service provider.

(b) A contract entered into under subsection (a) must address the following:

(1) The term of the contract.

(2) The scope of services and responsibilities of the service provider.

(3) Compensation.

(4) Periodic reporting to the governing authority of the consortium program.

(5) The ownership and confidentiality of information and data utilized by the service provider in performing the service provider's responsibilities under the contract.

(6) Compliance with the conflict of interest policy established by the consortium program.

(7) Indemnification of the consortium program for negligence of the service provider and proof of errors and omissions insurance.

(8) Assignability of the contract.

(9) Competition between the service provider and the consortium program during and after the term of the contract.

(10) Cancellation of the contract.

Sec. 16. (a) A consortium program shall have an annual audit performed by an independent certified public accounting firm according to guidelines established by the department of insurance.

(b) Not later than one hundred eighty (180) calendar days after the close of a consortium program's fiscal year, the consortium program must furnish the consortium program's members with audited financial statements certified by an independent certified public accounting firm.

(c) Copies of the audit report and certified financial statements required under this section must be provided to the commissioner and the state board of accounts not later than one hundred eighty (180) calendar days after the close of the consortium program's fiscal year.

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(d) A consortium program that fails to meet the deadline specified in subsection (c) without having obtained an extension from the commissioner is subject to a civil penalty of fifty dollars (\$50) per day until the required information is received by the commissioner.

(e) If a consortium program fails to have the annual audit performed as required by subsection (a), the commissioner shall cause the audit to be performed at the expense of the consortium program.

(f) The working papers of the certified public accountant and other records pertaining to the preparation of the audited financial statements required under this section may be reviewed by the commissioner. The cost of a review under this subsection must be paid by the consortium program.

Sec. 17. Not later than sixty (60) calendar days after the beginning of a consortium program's fiscal year, the governing authority shall submit the following to the commissioner:

- (1) A copy of the bylaws adopted by the consortium program.
- (2) A copy of each coverage document form issued by the consortium program.
- (3) A copy of the insurance contracts purchased by the consortium program, including contracts for excess insurance coverage.
- (4) A copy of each service provider contract entered into by the consortium program.
- (5) A certification by an independent actuary that the reserves in the self-insurance fund are adequate to pay the obligations of the consortium program.

Sec. 18. (a) If a consortium program fails to comply with the requirements of this chapter, the commissioner shall issue a notice of noncompliance to the consortium program.

(b) Not later than thirty (30) calendar days after a consortium program receives a notice of noncompliance under subsection (a), the consortium program shall file with the commissioner a written request for time to restore compliance and a plan to restore compliance.

(c) The commissioner, on receiving the written request and plan to restore compliance filed under subsection (b), may grant a period not longer than one (1) year during which the consortium program may restore compliance.

(d) If:

- (1) a plan to restore compliance is not filed under subsection

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(b);

(2) a plan to restore compliance is filed under subsection (b) and not approved by the commissioner; or

(3) a plan to restore compliance is filed under subsection (b) and approved by the commissioner, and at the end of a period granted under subsection (c) the consortium program is not in compliance with this chapter;

the commissioner may act to liquidate or rehabilitate the consortium program under IC 27-9 as if the consortium program were an insurance company.

Sec. 19. (a) The commissioner or an examiner:

(1) may conduct an examination of a consortium program under IC 27-1-3.1 as often as the commissioner, in the commissioner's sole discretion, considers appropriate; and

(2) shall conduct an examination of a consortium program under IC 27-1-3.1 at least once every five (5) years.

(b) Upon determining that an examination described in subsection (a) is necessary, the commissioner shall issue an examination warrant:

(1) appointing one (1) or more examiners to perform the examination; and

(2) instructing the examiners appointed under subdivision (1) concerning the scope of the examination.

(c) In conducting an examination under this section, an examiner shall observe the requirements set forth in the NAIC examiner's handbook (as defined in IC 27-1-3.1-6), to the extent that the requirements are consistent with this chapter. The commissioner may employ additional guidelines or procedures necessary to determine a consortium program's compliance with this chapter.

Sec. 20. (a) A consortium program is subject to IC 27-4-1 as if the consortium program were an insurance company.

(b) The rights of a claimant under a consortium program are in no event less than the rights of a claimant under an insurance contract issued by an insurance company authorized to do business under IC 27.

Sec. 21. The commissioner shall, not later than February 1 of each year, report to the legislative council in an electronic format under IC 5-14-6. The report must include the following information for the previous calendar year:

(1) A description of the scope of the market of coverage under:

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- 1 (A) insurance contracts; and
 2 (B) consortium programs;
 3 serving independent educational institutions.
 4 (2) The number of complaints filed against a consortium
 5 program under IC 27-4-1.
 6 (3) The number of independent educational institutions
 7 participating in consortium programs.
 8 (4) The loss history of each consortium program.
 9 Sec. 22. An insurance producer that conducts business with a
 10 consortium program must be licensed as an insurance producer
 11 under IC 27-1-15.6.
 12 Sec. 23. (a) Motor vehicle coverage provided by a consortium
 13 program must provide the ability for a member to respond in
 14 damages for liability arising out of the ownership, maintenance, or
 15 use of a motor vehicle in amounts at least equal to the amounts
 16 required under IC 9-25-4.
 17 (b) A member that participates in the motor vehicle coverage
 18 provided by a consortium program is considered to meet the
 19 financial responsibility requirements set forth in IC 9-25-4, and an
 20 application for a certificate of self-insurance under IC 9-25-4-11 is
 21 not required.
 22 Sec. 24. Information regarding the:
 23 (1) part of funds; or
 24 (2) liability reserve;
 25 established by a consortium program to satisfy a specific claim or
 26 cause of action is confidential and is not subject to subpoena or
 27 order to produce, except in a supplementary or ancillary
 28 proceeding to enforce a judgment.
 29 Sec. 25. The department of insurance may adopt rules under
 30 IC 4-22-2 to implement this chapter.

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 229, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"Sec. 1. As used in this chapter, "commissioner" means the insurance commissioner appointed under IC 27-1-1-2."

Page 1, line 6, delete "1." and insert "2."

Page 1, line 7, delete "7" and insert "10".

Page 1, line 9, delete "2." and insert "3."

Page 1, line 10, delete "7" and insert "10".

Page 1, between lines 10 and 11, begin a new paragraph and insert:

"Sec. 4. As used in this chapter, "examiner" has the meaning set forth in IC 27-1-3.1-4."

Page 1, line 11, delete "3." and insert "5."

Page 1, line 17, delete "4." and insert "6."

Page 2, line 8, delete "5." and insert "7."

Page 2, line 10, delete "7" and insert "10".

Page 2, line 11, delete "6." and insert "8."

Page 2, between lines 17 and 18, begin a new paragraph and insert:

"Sec. 9. As used in this chapter, "service provider" means an individual or entity that enters into a contract with a consortium program to provide to the consortium program:

- (1) administrative;**
- (2) insurance brokerage;**
- (3) claims administration;**
- (4) risk control; or**
- (5) investment management;**

services."

Page 2, line 18, delete "7." and insert "10."

Page 2, line 18, delete "five (5)" and insert "two (2)".

Page 2, line 35, delete "8." and insert "11."

Page 2, line 35, delete "body" and insert "authority".

Page 2, delete lines 37 through 42, begin a new paragraph and insert:

"Sec. 12. Except as provided in this chapter, the development, administration, and operation of a consortium program does not constitute the business of insurance, and a consortium program is not subject to the insurance laws of Indiana.

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Sec. 13. (a) A consortium program shall:

- (1) establish a self-insurance fund with a per claim limit and an aggregate limit on the total amount of self-insured risk retained by the members in a fiscal year; and
- (2) maintain excess insurance coverage that has been reviewed and approved by the commissioner.

(b) A self-insurance fund established under subsection (a) must be:

- (1) actuarially sound; and
- (2) funded at the beginning of each fiscal year by a contribution from each member in an amount that reflects the member's share of self-insured risk and other costs of the consortium program.

(c) Annual contributions to the self-insurance fund under subsection (b) must be:

- (1) determined using generally accepted actuarial standards; and
- (2) set to fund, at the beginning of each fiscal year, at least one hundred percent (100%) of the self-insured risk retained by the members in a fiscal year plus the other costs of the consortium program, including premiums for excess insurance coverage.

Sec. 14. (a) The governing authority of the consortium program shall adopt bylaws, including the following:

- (1) A financial plan setting forth in general terms:
 - (A) the types of risks covered under the consortium program;
 - (B) the per claim limit and the aggregate limit on the total amount of self-insured risk retained by the consortium program in a fiscal year;
 - (C) the minimum amount of excess insurance coverage that must be maintained by the consortium program; and
 - (D) the procedure for determining each member's annual contribution to the self-insurance fund.
- (2) A plan of management that provides for:
 - (A) the responsibility of the governing authority with regard to:
 - (i) maintaining the amount of reserves in the self-insurance fund;
 - (ii) disposing of surpluses; and
 - (iii) administering the consortium program in the event of termination;

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(B) the basis on which new members may be admitted to the consortium program;

(C) the basis on which participating members may withdraw from the consortium program, including a:

(i) thirty (30) day period at the end of each fiscal year after the consortium program's first year of operation during which a member may withdraw; and

(ii) requirement that a withdrawing member remains jointly and severally liable for any claim arising during the period during which the withdrawing member was a member; and

(D) other provisions necessary or desirable for the operation of the consortium program.

(3) A conflict of interest policy for:

(A) employees; and

(B) service providers;

of the consortium program.

(b) The following must be submitted to and approved by the commissioner before a consortium program may commence operations:

(1) A copy of the bylaws described in subsection (a).

(2) The form of any insurance contracts purchased by the consortium program, including contracts for excess insurance coverage.

(3) An accounting, based on generally accepted actuarial standards, of sufficient reserves committed to pay obligations of the consortium program.

(4) A copy of each coverage document form to be issued by the consortium program.

(5) Any other information determined necessary by the commissioner.

(c) If the commissioner does not disapprove the information submitted under subsection (b) earlier than thirty (30) days after the information is submitted, the information is considered approved.

Sec. 15. (a) A consortium program may enter into a contract with a service provider to obtain the services of the service provider.

(b) A contract entered into under subsection (a) must address the following:

(1) The term of the contract.

(2) The scope of services and responsibilities of the service

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provider.

(3) Compensation.

(4) Periodic reporting to the governing authority of the consortium program.

(5) The ownership and confidentiality of information and data utilized by the service provider in performing the service provider's responsibilities under the contract.

(6) Compliance with the conflict of interest policy established by the consortium program.

(7) Indemnification of the consortium program for negligence of the service provider and proof of errors and omissions insurance.

(8) Assignability of the contract.

(9) Competition between the service provider and the consortium program during and after the term of the contract.

(10) Cancellation of the contract.

Sec. 16. (a) A consortium program shall have an annual audit performed by an independent certified public accounting firm according to guidelines established by the department of insurance.

(b) Not later than one hundred eighty (180) calendar days after the close of a consortium program's fiscal year, the consortium program must furnish the consortium program's members with audited financial statements certified by an independent certified public accounting firm.

(c) Copies of the audit report and certified financial statements required under this section must be provided to the commissioner and the state board of accounts not later than one hundred eighty (180) calendar days after the close of the consortium program's fiscal year.

(d) A consortium program that fails to meet the deadline specified in subsection (c) without having obtained an extension from the commissioner is subject to a civil penalty of fifty dollars (\$50) per day until the required information is received by the commissioner.

(e) If a consortium program fails to have the annual audit performed as required by subsection (a), the commissioner shall cause the audit to be performed at the expense of the consortium program.

(f) The working papers of the certified public accountant and other records pertaining to the preparation of the audited financial statements required under this section may be reviewed by the

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commissioner. The cost of a review under this subsection must be paid by the consortium program.

Sec. 17. Not later than sixty (60) calendar days after the beginning of a consortium program's fiscal year, the governing authority shall submit the following to the commissioner:

- (1) A copy of the bylaws adopted by the consortium program.
- (2) A copy of each coverage document form issued by the consortium program.
- (3) A copy of the insurance contracts purchased by the consortium program, including contracts for excess insurance coverage.
- (4) A copy of each service provider contract entered into by the consortium program.
- (5) A certification by an independent actuary that the reserves in the self-insurance fund are adequate to pay the obligations of the consortium program.

Sec. 18. (a) If a consortium program fails to comply with the requirements of this chapter, the commissioner shall issue a notice of noncompliance to the consortium program.

(b) Not later than thirty (30) calendar days after a consortium program receives a notice of noncompliance under subsection (a), the consortium program shall file with the commissioner a written request for time to restore compliance and a plan to restore compliance.

(c) The commissioner, on receiving the written request and plan to restore compliance filed under subsection (b), may grant a period not longer than one (1) year during which the consortium program may restore compliance.

(d) If:

- (1) a plan to restore compliance is not filed under subsection (b);
- (2) a plan to restore compliance is filed under subsection (b) and not approved by the commissioner; or
- (3) a plan to restore compliance is filed under subsection (b) and approved by the commissioner, and at the end of a period granted under subsection (c) the consortium program is not in compliance with this chapter;

the commissioner may act to liquidate or rehabilitate the consortium program under IC 27-9 as if the consortium program were an insurance company.

Sec. 19. (a) The commissioner or an examiner:

- (1) may conduct an examination of a consortium program

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under IC 27-1-3.1 as often as the commissioner, in the commissioner's sole discretion, considers appropriate; and
 (2) shall conduct an examination of a consortium program under IC 27-1-3.1 at least once every five (5) years.

(b) Upon determining that an examination described in subsection (a) is necessary, the commissioner shall issue an examination warrant:

- (1) appointing one (1) or more examiners to perform the examination; and
- (2) instructing the examiners appointed under subdivision (1) concerning the scope of the examination.

(c) In conducting an examination under this section, an examiner shall observe the requirements set forth in the NAIC examiner's handbook (as defined in IC 27-1-3.1-6), to the extent that the requirements are consistent with this chapter. The commissioner may employ additional guidelines or procedures necessary to determine a consortium program's compliance with this chapter.

Sec. 20. (a) A consortium program is subject to IC 27-4-1 as if the consortium program were an insurance company.

(b) The rights of a claimant under a consortium program are in no event less than the rights of a claimant under an insurance contract issued by an insurance company authorized to do business under IC 27.

Sec. 21. The commissioner shall, not later than February 1 of each year, report to the legislative council in an electronic format under IC 5-14-6. The report must include the following information for the previous calendar year:

- (1) A description of the scope of the market of coverage under:
 - (A) insurance contracts; and
 - (B) consortium programs;
 serving independent educational institutions.
- (2) The number of complaints filed against a consortium program under IC 27-4-1.
- (3) The number of independent educational institutions participating in consortium programs.
- (4) The loss history of each consortium program.

Sec. 22. An insurance producer that conducts business with a consortium program must be licensed as an insurance producer under IC 27-1-15.6.

Sec. 23. (a) Motor vehicle coverage provided by a consortium

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program must provide the ability for a member to respond in damages for liability arising out of the ownership, maintenance, or use of a motor vehicle in amounts at least equal to the amounts required under IC 9-25-4.

(b) A member that participates in the motor vehicle coverage provided by a consortium program is considered to meet the financial responsibility requirements set forth in IC 9-25-4, and an application for a certificate of self-insurance under IC 9-25-4-11 is not required.

Sec. 24. Information regarding the:

- (1) part of funds; or
- (2) liability reserve;

established by a consortium program to satisfy a specific claim or cause of action is confidential and is not subject to subpoena or order to produce, except in a supplementary or ancillary proceeding to enforce a judgment.

Sec. 25. The department of insurance may adopt rules under IC 4-22-2 to implement this chapter."

Delete page 3.

and when so amended that said bill do pass.

(Reference is to SB 229 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 6, Nays 0.

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